



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Amended: 04/06/06

Bill No: AB 2791

Tax: Clean Vehicle Discount
Program

Author: Ruskin

Related Bills:

This analysis will only address the bill's provisions that impact the Board.

BILL SUMMARY

This bill would do the following:

- Require the State Air Resources Board (ARB) to implement a Clean Vehicle Discount (CVD) Program that provides for a discount or surcharge for every motor vehicle based on the vehicles impact on the environment, as specified.
- Authorize the ARB to contract with the Board of Equalization (Board) to perform its responsibilities under the CVD Program.

ANALYSIS

Current Law

Under existing law, a state and local sales and use tax is imposed on the sale or use of tangible personal property in this state, including motor vehicles. Currently, the total combined sales and use tax rate is between 7.25 and 8.75 percent, depending on the location in which the merchandise is sold. The Board does not collect any additional taxes or fees on the sale or use of motor vehicles.

The Board does, however, administer and collect the California tire fee on behalf of the California Integrated Waste Management Board (IWMB). Section 42885 of the Public Resources Code imposes a California tire fee of one dollar (\$1.75) per tire on every person who purchases a new tire, as defined, until December 31, 2006, and seventy-five cents (\$0.75) per tire after that date.

Proposed Law

This bill would add Article 3 (commencing with Section 4330) to Chapter 2 of Part 5 of Division 26 of the Health and Safety Code to establish a CVD Program.

Clean Vehicle Discount And Surcharge Program

After at least two public workshops, but no later than January 1, 2008, this bill would require the ARB to develop regulations to implement a CVD Program. In part, the regulations would establish a schedule of one-time vehicle discounts and surcharges for every motor vehicle eligible for inclusion in the program and specify the amount of the discount or surcharge, which would apply at the point of sale at the price of the vehicle after the relevant taxes are added. Automobile dealers would be reimbursed to cover the exact amount of the discounts attributed to new vehicles sold at the dealership.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

The one-time discount or surcharge would also apply to leased vehicles if the vehicle is leased for more than 24 months. Under such circumstances, the discount or surcharge amount could be amortized over the life of the lease.

This bill would allow the ARB to begin the first year of implementation of the discount and surcharge by enacting the discount portion of the program up to 30 days after the surcharge portion of the program goes into effect in order to create an initial buffer to help fund and administer the program.

This bill would also require the ARB to communicate with licensed automobile dealers and consumers information about the CVD Program, including, but not limited to, the following:

- All the relevant details of the program and provide reasonable assistance in their efforts to comply with the program.
- Modification of the air pollution label that is required to be displayed on new vehicles sold in the state pursuant to Section 43200.1 to include specific information on the applicable clean vehicle discount or emissions surcharge.

This bill would authorize the ARB to contract with the Board to perform its responsibilities under the CVD Program.

Discount and Surcharge Basis

This bill provides that the discount and surcharge schedule must be based on the vehicles impact on the environment relative to the entire vehicle fleet of the same model year, with the principal factor being tailpipe emissions of greenhouse gases, as described. The amount of the discount or surcharge would be calculated by using a continuous linear schedule, as specified in the bill. The linear scale would be set so that the largest discount and largest surcharge is at least two thousand dollars (\$2,000).

This bill would also require the ARB to create a zero-band that encompasses vehicles that are assigned neither a surcharge nor a discount, which would include between 20 and 25 percent of the fleet of a given model. Vehicles that would have otherwise been assigned a discount or surcharge of less than one hundred dollars (\$100) would become part of the zero-band category.

No final surcharge or discount to the consumer may exceed either of the following:

- Two thousand five hundred dollars (\$2,500).
- The amount of the sales tax on the purchase price of the vehicle.

Appropriate adjustments to the surcharges and discounts would be required annually based on recent and anticipated changes in motor vehicle sales, and to ensure that funds collected through one-time surcharges are sufficient to cover the cost of implementing the CVD Program, inclusive of any administrative costs relative to the implementation of the program incurred by any state agency.

Financial Provisions

This bill would create the Clean Vehicle Incentive Account (Account), which would be administered by the ARB. The funds collected from surcharges would be deposited into the Account. Moneys in the fund would be continuously appropriated to the ARB without regard to fiscal year to fund the clean vehicle discounts and to otherwise administer the CVD Program.

The bill also provides that any expenses related to the implementation of the CVD Program that are paid from the General Fund must be repaid with interest from the Clean Vehicle Discount Account.

Included Vehicles

This bill provides that all 2009 model year and all subsequent model year passenger vehicles and light-duty trucks that are subject to regulation pursuant to Section 43018.5¹ would be subject to the CVD Program, except as otherwise provided.

Exemptions from the CVD Program include the following:

- Vehicles purchased by small businesses, as defined in Section 14837 of the Government Code, for work-related purposes.
- Vehicles that are purchased by the state for use in official state business. Such vehicles would be eligible for the discount portion of the program.
- Emergency vehicles purchased by any local agency.

This bill would also require the ARB and Department of Motor Vehicles (DMV) to work together to create an exemption for large vehicles that are used primarily for the transport of disabled persons, including the option of only exempting these vehicles from the surcharge portion of the program.

Also subject to the surcharge would be new vehicles purchased in another state by anyone who is a California resident at the time of purchase when and if the resident returns to this state and registers the vehicle in this state within six months of purchase, if that vehicle would have otherwise been assigned a surcharge. The ARB would be required to cooperate with the DMV to develop and implement procedures to collect the surcharge for these new vehicles purchased in another state.

Miscellaneous

The provisions of this bill would become effective January 1, 2007.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Union of Concerned Scientists and is intended to encourage automobile buyers to purchase cleaner vehicles and to encourage manufacturers to offer more low-emitting vehicles to California consumers.

¹ Requires the ARB to develop and adopt regulations that achieve the maximum feasible and cost-effective reduction of greenhouse gas emissions from motor vehicles.

2. **What responsibilities would the ARB contract with the Board to perform?** This bill would authorize the ARB to contract with the Board to perform the ARB's responsibilities under the CVD Program. However, the ARB's responsibilities under the CVD program are not limited to the collection of the surcharge. The ARB's responsibilities include, in part, the development of regulations to implement the CVD Program, modifying the air pollution label that is required to be displayed on new vehicles sold in the state, and calculating the amounts of the discount or surcharge by using a continuous linear schedule. Each of these ARB responsibilities is outside the Board's area of expertise of revenue collection. As such, this bill should be amended to clarify that the ARB is authorized to contract with the Board to administer and collect the discount and surcharge.
3. **The Board's authority to collect.** This bill should be amended to specify that if the ARB were to contract with the Board to administer and collect the discount and surcharge, the Board is authorized to administer the discount and surcharge pursuant to the Fee Collection Procedures Law. The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. The Fee Collection Procedures Law was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund and appeals provisions, as well as providing the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law. Accordingly, the following language is required:

43303. (d)(1) If the state board contracts with the State Board of Equalization to administer and collect the discount and surcharge pursuant to the Clean Vehicle Discount Program, the State Board of Equalization shall administer and collect that fee and discount pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). The State Board of Equalization may prescribe, adopt, and enforce regulations to carry out this article, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

The bill must also specify a due date for the surcharge. Board staff is willing to work with the author's office in drafting appropriate amendments.

4. **Establishing discount and surcharge program by regulation could be problematic to administer.** Based on past experience, Board staff has found it difficult to administer tax and fee programs that are established by regulation adopted by another state agency. Since the Board has very limited control over such regulations, language adopted imposing a tax or fee or identifying specific products subject to the tax or fee may not be consistent with the Board's administration of other tax and fee programs. This could make it difficult to administer the program if the regulations are lacking definitions or other necessary provisions, or could result in a lawsuit that would have to be defended by the Board. Therefore, if the ARB intends to contract with the Board to administer and collect the discount and surcharge, the bill should be amended to include language imposing the surcharge, allowing for a discount, and specifying upon whom the discount and

surcharge would apply (automobile dealer or purchaser) rather than outlining the intent of the program as a guide to establishing regulations.

The Board administers a few tax and fee programs in which the tax or fee rate is determined by another agency based on criteria set forth in law, which is not problematic as long as there is sufficient time to implement any tax or fee adjustments. As such, adopting by regulations a schedule of one-time discounts and surcharges for each motor vehicle eligible for inclusion would not be problematic for the Board if the bill is amended to provide the Board at least 90 days to implement any adjustment to the amounts.

5. **This bill is not consistent with the application of use tax for vehicles purchased in another state.** This bill would impose a surcharge upon new vehicles purchased in another state by anyone who is a California resident at the time of purchase *if the resident returns to this state and registers the vehicle in this state within 6 months of purchase*, if that vehicle would have otherwise been assigned a surcharge. It appears that such a surcharge would be collected by the DMV at the time the vehicle is registered in this state.

Under the Sales and Use Tax Law (operative July 1, 2006) and Board regulations, a vehicle purchased by a California resident is presumed to have been purchased for use in California and is subject to the California use tax. Also, a vehicle purchased by a nonresident is presumed to have been purchased for use in California if it enters this state within the first 90 days of ownership. These transactions are subject to the tax unless all of the following occur:

- The purchaser takes title to and possession of the vehicle while it is out of state;
- The purchaser makes the first functional use of it outside the state; and
- The purchaser uses it out of state *for more than 90 days* before the vehicle first enters California.

Under Regulation 1620, *Interstate and Foreign Commerce*, in determining the 90-day period of use outside California, the time is not counted when the vehicle was in shipment, or in storage for shipment, to California.

If the vehicle is purchased outside California and is first functionally used outside California but enters the state within the first 90 days of purchase (exclusive of time of shipment or storage for shipment to California), the vehicle is presumed to have been purchased for use in California unless it is used or stored outside the state more than 50 percent of the time during the six-month period immediately following the first entry into California.

The applicable use tax is remitted to the DMV at the time the vehicle is registered in this state, which would be the same method of collection of the surcharge for vehicles purchased outside this state by a California resident. However, the surcharge would only apply to a California resident (the use tax could apply to both a resident and nonresident) and would be imposed based upon different timing rules than the use tax. Therefore, it should be noted that collection of the surcharge under such circumstances could be confusing to both the DMV and the vehicle owner, which could lead to collection errors.

6. **Other technical concerns.** In order to avoid any ambiguity with administration of the discount and surcharge, the following amendments should be considered to address Board staff concerns which include, in part, the following:

- Would the discount or surcharge apply to sales of used cars upon which a discount or surcharge was never applied? For example, if a resident of another state purchases a 2009 model year vehicle, moves to California and subsequently sells that vehicle to a California resident in this state, would the discount or surcharge apply to that sale? It appears from reading the findings and declarations that the intent is for the surcharge and discount only apply to new vehicles. As such, the bill should be amended to clarify this intent.
- The Fee Collections Procedures Law allows for the refund or credit for amounts paid more than once or erroneously or illegally collected or computed, but would not allow for the discount reimbursement amount to be given to an automobile dealer. Therefore, if the ARB intends to contract with the Board to administer and collect the discount and surcharge, this bill should be amended to include appropriate administrative provisions to allow for a refund or credit of the discount.
- Would a California resident that purchases a vehicle in another state be eligible for a discount if the resident returns to this state and registers the vehicles in this state within 6 months of purchase, if that vehicle would have otherwise been assigned a discount?
- How would an automobile dealer report a discount or surcharge on a vehicle that is leased for more than 24 months? Since the discount or surcharge may be amortized over the life of the lease, would those amounts be reported to the collecting agency as amortized? Or would the automobile dealer be required to report the surcharge or claim the discount in its entirety upfront?
- This bill provides in Section 43302(b)(3) that the “linear scale shall be set so that the largest discount and largest surcharge is at least two thousand dollars (\$2,000).” This language is confusing in that it is not clear if the largest discount or surcharge would be two thousand dollars, or if the discount or surcharge would be more than two thousand dollars. This language also contradicts subdivision (e) of that same section, which provides that no final surcharge or discount shall exceed two thousand five-hundred dollars (\$2,500) or the amount of the sales tax on the purchase price of the vehicle.
- This bill provides in Section 43302(f) that “[t]he state board shall make appropriate adjustments annually to the surcharges and discounts...” Without a specific date for the annual adjustments, administration could be difficult if there is not adequate time to notify automobile dealers. Any date that is added should take into consideration any due date added for the surcharge.
- This bill provides for an exemption for “large vehicles” that are used primarily for the transport of disabled persons. What would constitute a “large vehicle?” Without more specific exemption language there will likely be administration problems.

7. **Legal challenges of any new fee/surcharge program might be made on the grounds that the fee/surcharge is a tax.** In July 1997, the California Supreme Court held in *Sinclair Paint Company v. State Board of Equalization* (1997) 15 Cal.4th 866 that the Childhood Lead Poisoning Prevention Act of 1991 imposed bona fide regulatory fees and not taxes requiring a two-thirds vote of the Legislature under Proposition 13. In summary, the Court found that while the Act did not directly regulate by conferring a specific benefit on, or granting a privilege to, those who pay the fee, it nevertheless imposed regulatory fees under the police power by requiring manufacturers and others whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating those products' adverse health effects.

Although this measure has been keyed by the Legislative Counsel as a majority vote bill, opponents of this measure might question whether the surcharge imposed is in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature.

COST ESTIMATE

This bill would not increase administrative costs to the Board because it only authorizes the ARB to contract with the Board to perform its responsibilities under the CVD Program. The ARB would be required to contract with the Board to perform administrative and collection functions related to discount and surcharge, and reimburse the Board for its preparation costs to administer that program as well as the ongoing costs for the Board's services in actually administering and collecting the discount and surcharge.

The Board would incur non-absorbable costs to adequately develop and administer a new discount and surcharge program if the ARB were to contract with the Board to administer and collect the proposed discount and surcharge. These costs would include registering automobile dealerships, developing computer programs, mailing and processing returns and payments, conducting audits, developing regulations, training staff, and answering inquiries from the public. A cost estimate of this workload is pending.

REVENUE ESTIMATE

This measure does not specify the amount of the discount and surcharge, or the specific motor vehicles to which the discount or surcharge would apply. Accordingly, a revenue estimate can not be prepared.

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